In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No.

GOLDEN GATE BRIDGE AND HIGHWAY DISTRICT OF CALIFORNIA (a public corporation of the State of California),
Petitioner and Appellant Below,

vs.

UNITED STATES OF AMERICA,
Respondent and Appellee Below.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.
OPINION OF THE NINTH CIRCUIT.

The opinion filed February 16, 1942, has been officially reported. It has been printed in the record for the convenience of the Court and appears at pages 236 to 245 thereof. (125 F. (2d) 872.)

II.

JURISDICTION.

1. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 237 of the Judicial Code as amended. (U.S.C.A. Title 28, Section 344.)

2. The date of entry of the judgment or decree is February 16, 1942. A petition for rehearing was filed, and denied April 10, 1942. The decree then became final. (*Morse v. U. S.*, 270 U. S. 151.) By order of Court the mandate was stayed to May 16, 1942.

The requisite number of printed copies of the printed transcript are being filed with this Court.

3. The facts, with reference to the record, which show the nature of the cause and the rules bringing the case within the jurisdictional provision relied on, have been set forth in the body of the petition for the writ and they are hereby referred to.

4. It is believed that the following cases sustain the jurisdiction of this Court to grant certiorari:

Hamilton-Brown Shoe Co. v. Wolf Bros., 240 U. S. 251, 36 S. Ct. 269;

Frankfurter and Hart, 48 Harv. L. Rev. 238, 272:

51 Harvard Law Rev. 577, 594;

O'Brien's Federal Procedure, page 281.

III.

STATEMENT OF THE CASE.

A fairly full statement of the case, which is believed to embrace all of the facts necessary to an understanding of the points involved, has been given under the heading "Summary Statement of the Matter Involved" in the petition. It is respectfully suggested that in the interest of brevity it need not be repeated here.

IV.

POSITION OF THE APPELLANT IN THE COURTS BELOW.

Appellant in the Courts below, challenged the authority of the Secretary of War to exact free tolls in the permit for the building of the bridge.

In the Ninth Circuit Court of Appeals, the appellant deemed it its duty, as a matter of patriotism, to withhold argument on that question, SO FAR as it affects the military and naval forces of the United States. Notwithstanding the appellant's confidence in the validity of its position, it withholds argument here as it relates to the military and naval forces and their personnel. The lack of authority on the part of the Secretary of War, however, is asserted, so far as it relates to "government traffic" exclusive of the military and naval forces.

V.

SPECIFICATION OF ERRORS.

The specifications have, in substance, been given in the petition. In brief form we summarize them thus:

The Circuit Court of Appeals erred:

1. In failing to reverse the judgment of the District Court.

2. In holding that the Secretary of War had authority to impose immunity from tolls over the Golden Gate Bridge for all "government traffic" of the various civilian departments of the United States.

3. In holding that the Act of July 5, 1884 (Section 1348, Title 10, U.S.C.A. page 232), clothed the Secretary of War with authority to exact freedom from tolls over a bridge spanning state waters.

4. In holding that the Act of July 5, 1884, clothed the Secretary of War with authority to regulate tolls beyond the federal reservations as to civilians in the United States employ.

5. In holding that the Secretary of War had the constitutional right to exact freedom from tolls from a public bridge corporation where the United States has contributed nothing, directly or indirectly, to the building of the bridge.

6. In holding that the Secretary of War, and not the Congress, alone had authority to exact freedom of tolls over the bridge.

7. In holding that Congress had delegated the authority to the Secretary of War to exact freedom from tolls over a bridge crossing state waters.

8. In holding that the permit of the Secretary of War for the building of the Golden Gate Bridge should be construed to provide immunity from tolls for all personnel of all civilian and other departments of the United States.

9. In holding that the permit for the building of the bridge clearly expressed, without ambiguity, a requirement for free tolls to all branches of the federal service.

10. In holding that "government traffic" written in the permit meant all forms of government traffic, civilian as well as military and naval.

11. In holding that the phrase "government traffic" should not be restricted to traffic of the military and naval forces but should be extended to every department, and the personnel thereof, within the United States.

VI.

ARGUMENT.

POINT 1.

SECTION 1348 DID NOT CLOTHE THE SECRETARY OF WAR WITH AUTHORITY TO EXACT IMMUNITY FROM TOLLS, WITHOUT CONSENT OF CONGRESS.

The sole authority under which the Secretary of War required immunity from tolls is the Act of July 5, 1884, being Section 1348, Title 10, U.S.C.A. The title of that Act is:

> ROADS ACROSS AND FERRY LANDINGS ON MILITARY RESERVATIONS; DRIVING ANIMALS ACROSS RESERVATIONS.

Obviously, this meager statute was intended to commit to the Secretary of War the supervision of the location of roads and highways and the establishment of regulations to protect the reservation against injury. Clearly, Congress never intended to abdicate its authority by committing to the Secretary of War authority to exact immunity from tolls over a bridge spanning state waters, nine-tenths of which was not under federal jurisdiction. If the Secretary of War had authority to extend the benefit of free tolls to every department and employee of the United States, in perpetuity, it must come from the language of this Act. There is none other.

This section has never been held to clothe the Secretary of War with other than limited authority. All authority to build on government reservations has been given by direct consent of Congress. (See notes to Section 1348, 10 U.S.C.A. page 232.)

Section 1348 is strictly limited in the authority conferred upon the Secretary of War and cannot be extended by implication to any general power. It cannot be construed to authorize the making of any rules of a legislative nature.

30 Attorney General's Opinions 470-481;
26 Attorney General's Opinions 81;
21 Attorney General's Opinions 537-539.

Rules and regulations made by the Secretary (of the Interior) are void unless express authority is conferred by the Congress. *Van Lear v. Eisele,* 126 Fed. 828 (declaring invalid a reservation of the Secretary restricting use of government waters).

Action of the Secretary of War must be strictly within the framework of the policy as defined by Congress in the Act, and any act of the Secretary beyond the powers expressly delegated, is without constitutional authority.

Panama Refining Co. v. Ryan, 293 U. S. 425 (79 Law Ed. 463) (declaring invalid an executive order relating to transportation of oil).

The power exercised must be expressly conferred upon the officer by the Congress or it does not exist.

Federal Trade Commission v. Raladam Co., 282 U. S. 642 (75 L. Ed. 1324);

Detroit Ry. v. Detroit, 171 U. S. 54 (43 L. Ed. 71);

Union Bridge Co. v. U. S., 204 U. S. 364-386 (51 L. Ed. 523-533);

Utah Power Co. v. U. S., 243 U. S. 389 (61 L. Ed. 691);
U. S. v. Ickes, 84 Fed. (2d) 228.

POINT 2.

EVERY PRESUMPTION IS AGAINST IMMUNITY FROM TOLLS AND NO SUCH IMMUNITY WILL BE GRANTED UNLESS CLEARLY EXPRESSED BY LANGUAGE FREE FROM AMBIGUITY.

It is not to be held that Congress intended to exact immunity from tolls, even in a federal-aid bridge unless it is so stipulated in clear and unequivocal language free from doubt; to hold otherwise would be to take the property of the bridge district without compensation and in violation of the federal Constitution.

Gouax v. Bovay, 105 Fed. (2d) 256 (Fifth Circuit).

A construction requiring immunity from tolls for government troops and traffic will not be adopted unless the language of the permit clearly states a requirement for all-inclusive free passage.

U. S. v. Columbia River-Longview Bridge, 99 Fed. (2d) 287 (Ninth Circuit).

The federal government is responsible for all tolls for the passage of troops and munitions unless there is a clear and explicit requirement by Congress to the contrary.

Louisville Bridge Commission v. United States, 89 Court of Claims, page 493.

Any other construction would be unreasonable (*Gouax v. Bovay,* supra), and it is not the law that any ambiguity in the permit is to operate in favor of the government. (*U. S. v. Columbia River-Longview Bridge,* supra.)

It is stipulated by the government, that the revenues of the Golden Gate Bridge are insufficient to meet its expenditures and that unless such revenues increase a tax must fall upon the property of the public. This is caused by the deprivation of tolls which denies the Bridge District what we contend is its rightful income. That a bridge district whose taxpayers, without federal aid and solely by funds of a bond issue, should be driven to an *ad valorem* tax, and possibly worse, is unreasonable. And this, particularly, where the only contribution of an easement by the government is for the government benefit, freely conceded by stipulation enumerating the advantages flowing to the United States. (R. pages 34-36.)

> "The construction is unreasonable and tends to the use of private property without just compensation."
>
> *Gouax v. Bovay,* 105 Fed. (2d) 256.

POINT 3.

THE PHRASE "GOVERNMENT TRAFFIC", USED IN THE PERMIT, IS SHOWN (1) BY THE LETTER OF SECRETARY WEEKS INDICATING ITS PURPOSE, (2) BY THE POSITION OF THE PHRASE IN THE CONTEXT, AND (3) BY ALL ACCEPTED CANONS OF CONSTRUCTION TO RELATE ONLY TO TRAFFIC OF THE MILITARY AND NAVY DEPARTMENTS AND THEIR DESIGNATED PERSONNEL.

The letter of Secretary Weeks (R. page 51) points out that the question would be handled by the Chief of Engineers and Secretary of War, but because a military question was involved certain preliminary matters were to be disposed of. All the requirements of the Secretary of War were complied with.

The Secretary of War in using the term "government traffic" undoubtedly meant "military and naval traffic" and not traffic of governmental agencies that had no relation to the purposes for which the government desired to obtain use of the bridge—agencies, many of which were not even in existence or within the Secretary's contemplation.

Paragraph 6 of the amended permit reads as follows:

> "That civilian employees of the Army and Navy traveling on government business under proper military authority, and government traffic, and all military and naval personnel and their dependents, shall have the use of the bridge and roads free of charge." (R. page 169.)

An analysis of the permit shows that "civilian employees of the Army and Navy traveling on government business under proper military authority" are

first taken care of. It is crystal clear that this language merely includes the *persons* of the Army and Navy and no provision is thus far made for their *traffic*. Thereupon, the instrument proceeds to follow the permit to the persons by according passage to their traffic. That is the "government traffic" intended. It then proceeds to include "and all military and naval personnel and their dependents". Clearly the Secretary of War intended to include three elements, all military or naval, as follows:

First: Civilian employees of the Army and Navy traveling on government business.

Second: The government traffic of such Army and Navy personnel, and,

Third: All military and naval personnel and their dependents.

How can it reasonably be suggested that the Secretary of War would provide for the passage of civilian employees and make no provision for their traffic—that is, their vehicles and baggage? Is it reasonable to contend that in the center of a permit providing for nothing but military and naval forces, there should be sandwiched a provision for civilian traffic and leave the Army and Navy traffic wholly unprovided for?

It seems clear that the phrase "government traffic" was to provide for the traffic of the designated classes who otherwise would be entitled only to pass *as persons* without vehicles, baggage, etc.

The second paragraph of subdivision 11 is:

> "All traffic shall be free from any tolls * * * against military and naval personnel and their dependents, civilans of the army travelling on government business, under military authority and government traffic."

Nothing is anywhere discussed in this reservation except military and naval forces. It would violate every presumption to assume that the Secretary of War was trying to make reservations for traffic of the Department of Agriculture, or the Civilian Conservation Corps, or the W. P. A. or the Federal Housing Commission, or the Bureau of Animal Industry, or the Reconstruction Finance Corporation, or the multiplicity of other essential government departments.

If "government traffic" was intended to include every government agency and employee, it was not necessary to single out the Army and Navy, the dependents, or the civilian employees, in the classifications set forth in the permit. All it need have said was, "all government traffic".

We respectfully suggest that every well considered authority, federal and state, embracing canons of construction, holds in accordance with the illustrative case *In re Johnson*, 167 Cal. 142:

> "The rule that particular words control (over general words which follow) is founded upon the reason that if the general words were intended to prevail in their full and unrestricted sense, the special words would not have been employed at all."

It is an accepted rule of construction that when general words follow the enumeration of particular persons or things, the general words will be construed to be applicable to the same general nature or class as those enumerated.

Pasadena University v. Los Angeles, 190 Cal. 876 (citing 36 Cyc. 1119; 25 R. C. L. 996, 2 Lewis Sutherland's Statutory Construction, 803-804.)

Commonwealth v. Lehigh R. R. Co., 110 Atl. 725;

Donaghy v. State, 110 Atl. 696;

Jefferson County Court v. Jefferson County, 128 S. W. (2d) 230;

Yarlott v. Brown, 138 N. E. 17;

Ex parte Marquez, 3 Cal. (2d) 625;

U. S. v. Baumgartner, 259 Fed. 722.

Discussing the application of the rule *ejusdem generis* the Court, in *Donaghy v. State,* says:

> "Such rule is based on the obvious reason that if it was intended that the general words should be used in their unrestricted sense, no mention would have been made of the particular classes."

A strictly analogous case is *United States v. City of Detroit,* 12 Fed. Supp. 345. The statute read:

> "The United States shall have power to purchase or condemn any land required for Custom Houses, Arsenals, Light Houses, National Cemeteries, *or for other purposes of the United States.*"

The Court restricted "the other purposes of the United States" strictly to those government purposes

similar in kind to those specifically recited, and excluded every other purpose of the United States.

The patience of this Court must not be exhausted by recital of other cases.

It is respectfully urged that any extension of the permit granting immunity for tolls beyond the Army and Naval forces and their personnel—any attempt to include the innumerable civilian agencies of the United States—is a distortion of the purpose which the Secretary of War had in mind.

Dated, San Francisco, California,
May 8, 1942.

Respectfully submitted,
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